IN THE UNITED STATES SUPREME COURT.

RIVERDALE COTTON MILLS,
Petitioner,

v.

ALABAMA & GEORGIA MFG. CO., ET AL.,
Respondents.

BRIEF OF THOMAS H. WATTS, FOR PETITIONER.

1. STATEMENT OF THE CASE.

In January, 1891, one Robinson, as trustee, alleging himself to be, and who was, a citizen of Alabama, filed his bill in the Circuit Court of the United States for the Northern District of Georgia, (p. 2, et seq., Record), to foreclose a mortgage executed by Alabama & Georgia Manufacturing Company on January 2, 1884, to secure certain bonds issued by it. This mortgage conveyed an indivisible property operated as one concern, situated partly in Alabama and partly in Georgia. To the said Robinson bill, the Alabama & Georgia Manufacturing Company and the Huguley Manufacturing Company, both alleged to be corporations organized under the laws of Georgia, were made defendants. In the said Robinson bill, it was alleged that said Alabama & Georgia Manufacturing Company was insolvent and had ceased to do business; that under a decree rendered in a court of the State of Georgia, all of the property of said Alabama & Georgia Manufacturing Company had been sold in January, 1890, subject to the mortgage above mentioned, to parties who conveyed the same to said Huguley Manufacturing Company, and that said Huguley Manufacturing Company had gone at once into, and were still in,

the possession of all of said property covered by said mortgage. The Alabama & Georgia Manufacturing Company and Huguley Manufacturing Company answered said bill of Robinson, as trustee, (p. 18, Record), admitting the citizenship, the sale of the property of the Alabama & Georgia Manufacturing Company, and the purchase and possession thereof by the Huguley Manufacturing Company, subject to the said mortgage as alleged in said Robinson bill, and admitting that the said Alabama & Georgia Manufacturing Company had gone out of business; but said answer contested the right of the said trustee to have said mortgae foreclosed. The Huguley Manufacturing Company filed an amendment to its answer (p. 27, Record), alleging that it was the owner of the property mentioned in the Robinson mortgage, subject to said mortgage. There was a decree in said Robinson suit, in May, 1892, foreclosing said mortgage and ordering all the property covered thereby in Georgia and Alabama sold to satisfy the said mortgage, and in the said decree, (p. 164, Record), the court found among other things, the following: "In the year 1888, a bill in equity was filed in the State courts by other creditors and a receiver appointed for the factory property named, who, after holding same for a short time, sold said property by order of the court, the sale being made subject to the bonds and mortgage before alluded to. The purchasers at this sale afterwards organized themselves into what is known as the Huguley Manufacturing Company." Under said decree of said Circuit Court of the United States for the Northern District of Georgia, said mortgaged property was sold and went into the possesion of the purchaser, and said sale was confirmed, (p. 185, Record). There was an appeal from said decree of sale, and said decree of sale was reversed in the Court of Appeals for the Fifth Circuit, May 30, 1893.

In May, 1895, there was a second decree of foreclosure and sale of said property, in which decree (p. 563, Record), it was found by the court, among other things, "a mortgage under which the property was sold, was made by the Alabama & Georgia Manufactur-

ing Company in January, 1884. Subsequently, by reason of some litigation in the Superior Court, the property of the Alabama & Georgia Manufacturing Company went into the hands of a receiver and was sold, and bought by persons who afterwards organized the Huguley Manufacturing Company, they buying at the receiver's sale, subject to the mortgage of Robinson, trustee." There was an appeal from said second decree to the Circuit Court of Appeals, where said decree was affirmed in January, 1896. After the second appeal, on the petition of Huguley Manufacturing Company, (p. 200, Record), a decree was rendered in the Circuit Court of the United States for the Northern District of Georgia, requiring Robinson, as trustee, to credit on the debt secured by the mortgage, the value of the use and occupation of the property between the times of the first and second sales. In March, 1896, the Circuit Court for the Northern District of Georgia passed an order requiring the second foreclosure sale, which had been decreed but stopped by the second appeal, to be proceeded with, and said property was sold under said last decree in September, 1898. At said sale, L. Lanier, acting for Riverdale Cotton Mills, the petitioner, became the purchaser of all of said property of the Alabama & Georgia Manufacturing Company in Georgia and Alabama, and the said sale was confirmed, and petitioner was put into possession of all of said property. There was a third appeal to the Circuit Court of Appeals, where the decrees and order of the Circuit Court were affirmed in May, 1899. From this last decree of affirmance in said Circuit Court of Appeals, an appeal was sued out to the Supreme Court of the United States, which last named court dismissed said appeal on the 24th day of February, 1902. (Huguley Mfg. Co. v. Galeton Cotton Mills, 184 U. S.)

In June, 1901, said Alabama & Georgia Manufacturing Company, and Huguley Manufacturing Company, alleging themselves to be corporations organized under the laws of Alabama, by the same solicitors who had represented said two corporations in said Robinson suit, filed their bill, (pp. 610-624, Record), in the Chancery

Court of Chambers County, Alabama, against said Robinson as trustee, Riverdale Cotton Mills and other corporations, in which bill it was alleged, in substance, that all of the proceedings in the said cause of Robinson, as trustee, against Alabama & Georgia Manufacturing Company and Huguley Manufacturing Company, in the Circuit Court of the United States for the Northern District of Georgia, were void, on the grounds, principally, that all or some of the property described in the mortgage executed by Alabama & Georgia Manufacturing Company to Robinson, as trustee, is situated in Alabama, and that said Alabama & Georgia Manufacturing Company and Huguley Manufacturing Company were corporations organized under the laws of Alabama, and that said Circuit Court of the United States for the Northern District of Georgia never acquired jurisdiction of said two corporations, as organized in Alabama, and never acquired jurisdiction of their property in Alabama, and that the decree by which said mortgage was foreclosed, said property sold and Riverdale Cotton Mills placed in possession as purchaser, was void. The said Alabama & Georgia Manufacturing Company and Huguley Manufacturing Company sought in said Chambers County, Alabama, suit, to hold said Riverdale Cotton Mills and others responsible for the rents of said property since the sale of said property under said foreclosure sale, sought to redeem said property under said mortgage, and, in fact, sought to reopen and relitigate all of the questions settled and adjudicated in said Robinson suit.

After the filing of, and service of process on, said Chambers County suit, and after demurrer had been filed to said bill, and motion made to dismiss it for the want of equity, said Riverdale Cotton Mills filed its bill in the case, ancillary to the proceedings in said Robinson suit, (pp. 597-624, Record), setting forth in substance all of the proceedings in the case of Robinson as trustee, against the Alabama & Georgia Manufacturing Company and Huguley Manufacturing Company. The said ancillary bill was filed against said Alabama & Georgia Manufacturing Company and the Hu-

guley Manufacturing Company as Georgia corporations, and their solicitors and did not admit said corporations to have been also organized under the laws of Alabama. Said ancillary bill informed said Circuit Court of the United States for the Northern District of Georgia of the effort made by said Alabama & Georgia Manufacturing Company and Huguley Manufacturing Company, by their bill filed in Chambers County, Alabama, to retry and treat as a nullity all of the matter adjudicated against them in said case of Robinson, as trustee, gainst said two corporations in the Circuit Court of the United States for the Northern District of Georgia. In this ancillary proceeding, said Riverdale Cotton Mills prayed, (p. 605, Record), said Circuit Court of the United States for the Northern District of Georgia to protect said Riverdale Cotton Mills in the possession of said property, and to enjoin said Alabama & Georgia Manufacturing Company and Huguley Manufacturing Company from prosecuting said suit in Chambers County, Alabama, and from prosecuting any other suit of ilke nature, and from interfering, in any manner, with said Riverdale Cotton Mills in the possession and enjoyment of said property. An order was issued in said ancillary proceeding, (p. 626, Record), by said Circuit Court of the United States for the Noetnrrh District of Georgia, requiring said Alabama & Georgia Manufacturing Company and Huguley Manufacturing Company and their solicitors to show cause why they should not be enjoined as prayed for in said ancillary bill, and restraining said two corporations, in the mean time, from proceeding with said Chambers County suit. Said Alabama & Georgia Manufacturing Company and Huguley Manufacturing Company filed an answer, (pp. 629-660, Record), in which they set up in substance that each of said corporations had been incorporated under the laws of Alabama; that said Alabama & Georgia Manufacturing Company had also been incorporated under the laws of Georgia, and that it was only as a Georgia corporation that it had been sued in said Robinson suit, and that the proceedings in said Robinson suit did not bind it as an Alabama corporation. Said answer also set up that

said Huguley Manufacturing Company had never been incorporated under the laws of Georgia. It was further pleaded that the proceedings in said Robinson suit were void, and that said Circuit Court of the United States for the Northern District of Georgia, had no jurisdiction of said ancillary bill.

While this case was pending in the Circuit Court of the United States for the Northern District of Georgia, said Huguley Manufacturing Company unsuccessfully endeavored to obtain from this court a writ of prohibition against said Circuit Court . (In re Huguley Mfg. Co., 184, U. S.)

There was no evidence, (p. 665, Record), introduced in said ancillary proceedings, except the record in said Robinson suit, and there was a final decree, (p. 665, Record), in said ancillary proceedings in favor of said Riverdale Cotton Mills, and among other things, enjoining said Alabama & Georgia Manufacturing Company and Huguley Manufacturing Company from prosecuting said Chambers County, Alabama, suit, and from interfering with the enjoyment and possession of said Riverdale Cotton Mills of said property purchased by it under said foreclosure sale in said Robinson suit. From said last mentioned decree, the appeal in this cause above referred to was prosecuted to the Circuit Court of the United States for the Fifth Circuit, which Court reversed, by a divided court, the said decree of the Circuit Court of the United States for the Northern District of Georgia in favor of said Riverdale Cotton Mills, and ordered said ancillary bill dismissed as aforesaid; holding that said Circuit Court of the United States for the Northern District of Georgia had no jurisdiction of said ancillary bill filed by said Riverdale Cotton Mills; holding that said proceeding by said Riverdale Cotton Mills was not an ancillary but an original proceeding and holding that said Alabama & Georgia Manufacturing Company, as an Alabama corporation, was not bound by said proceedings in said Robinson suit.

2 THE JURISDICTION OF THE CIRCUIT COURT.

The Circuit Court of the United States for the Northern District of Georgia had complete jurisdiction of the suit by Robinson, trustee, against Alabama & Georgia Manufacturing Company and Huguley Manufacturing Company. It was alleged in that suit that Robinson was a resident citizen of Alabama and that the two defendant corporations and W. T. Hugley were citizens of Georgia. The mortgaged lands were alleged to be partly, if not entirely in Georgia and, by answer filed in said cause, these two corporations admitted that they were corporations resident citizens of Georgia, that their place of business was in that State, and that Robinson was a citizen of Alabama. (p. 18, Record). The citizenship of the parties, plaintiff and defendant as alleged in the bill was never controverted nor denied.

These facts gave the Circuit Court jurisdiction of the case.

Muller vs. Dows, 94 U. S. 444.
Horn vs. Boston, 18 F. R. 50.
Railway Co. vs. Whitton, 13 Wall. 270.
Rouse vs. Letcher, 156 U. S. 47.
Connolly vs. Taylor, 2 Pet. 556.
Gregory v. Van Ee., 160 U. S. 64.

The trustee and mortgagor and Huguley Company having been before this Court in the Robinson case, such jurisdiction was obtained of their persons therein as efficaciously to foreclase the mortgage and bar all their rights to the property involved.

Craft vs. Indianapolis, 46 N. E. R., 1135-6.
Phelps vs. McDonald, 99 U. S. 298, 308.
Wilmer vs. Railroad, 2 Wood, 409-447; 30 F. cases.
Miller vs. Sherry, 2 Wallace, 248-9.
Cole vs. Cunningham, 133 U. S. 116.
Massie vs. Watts, 6 Cranch, 157-60.
Revised Statutes, Sec. 629.

The allegation of the bill in the Robinson case was to the effect that the lands described in the mrotgage were situated partly in Georgia and partly in Alabama. This allegation gave the court jurisdiction to foreclose said mortgage as to all of said lands.

Muller vs. Dows, 94 U. S. 444.
Wabash vs. Illinois, 118 U. S. 557.
Jones on Railroad Securities, Sections 413-14.

A part of the land being in Georgia, jurisdiction of the whole land was acquired by the Court.

Muller vs. Dows, 94 U. S. 444.
McIlrath vs. Pittsburg, 55 Pa. St. 189.
3 Cook on Corporations, 4 ed. Sec. 840.
Woodbury vs. Allegheny, 72 F. R. 371.
Jones on Railroad Securities, Secs. 413-14.
Massie vs. Watts, 6 Cranch, 148.
9 Notes U. S. Rep. pp. 118-19.

The Court takes judicial notice of State boundaries.

Coffee vs. Grouver, 123 U. S. 11.
17 Encyc. Law, 2d ed. 911.

And judicial notice is conclusive.

Schollenberger vs. Pennsylvania, 171 U. S. 1.
17 Encyc. Law, 2d ed. 911, note 2.

The Court judicially knows the location of lands according to government surveys.

Chambers vs. Ringstaff, 69 Ala. 140.

The Western high ordinary water mark of the Chattahoochee river is the boundary line between the States of Alabama and Georgia.

Alabama vs. Georgia, 23 How. 505.

3. THIS PROCEEDING IS ANCILLARY.

An examination of the prayer of the bill filed by the Riverdale Cotton Mills will show that the relief sought is limited to the rights of the complainant sought to be invaded in the Chambers County suit and to a protection of said Riverdale Cotton Mills in the possession and ownership of the property purchased and paid for and the upholding of the dignity and authority of the Circuit Court of the United States for the Northern District of Georgia. The object is to prevent the Riverdale Cotton Mills from being compelled to litigate in another jurisdiction matters already adjudicated and forever settled by the decrees of the Circuit Court of the United States for the Northern District of Georgia and by the decree of the Circuit Court of Appeals on the appeals taken in the Robinson case.

The mortgage foreclosed did not purport to be executed by the Alabama & Georgia Manufacturing Company of Alabama, nor by the Alabama & Georgia Manufacturing Company of Georgia, but simply by the Alabama & Georgia Manufacturing Company, a corporation. It was sued as a Georgia corporation and admitted itself to be such. There was a decree against it and the mortgage was foreclosed. If, as an Alabama corporation, it has any rights as to said property, different from those it had as a Georgia corporation, the United States Court for the Northern District of Georgia has ample jurisdiction in a proceeding ancillary to the original suit to protect said rights and the said court has also, we respectfully insist, the right and power in a proceedings ancillary to the original suit, on the idea of doing complete justice, to prevent said Alabama & Georgia Manufacturing Company from asserting in another tribunal its alleged rights in the property, and said court has the right to determine the question as to whether the two corporations are not in property and in name the same.

Ober v. Gallagher, 93 U. S. 199.
Sunflower Oil Co. v. Wilson, 142 U. S. 313.
Root v. Woolworth, 150 U. S. 401.
French v. Hay, 22 Wall, 250.

If, from inadvertence, or otherwise, some of the rights of the parties have been left unadjudicated, or in order to do complete justice, or to enforce its own decrees, a chancery court always has the power, in an ancillary proceeding, to complete its work and not remit said parties to any other tribunal to obtain their rights. Said court is bound to protect the purchaser under its decree in the possession of the property sold. This has been decided too often to need authority to support.

This proceeding was not an original, but an ancillary bill, and being such, the court had jurisdiction, regardless of the citizenship of the parties.

Rouse v. Letcher, 156 U. S. 47.
Gregory v. Van Ee, 160 U. S. 64.
Carey v. Houston, etc., 161 U. S. 115.
Pacific, etc. v. Missouri, etc., 111 U. S. 505.
Root v. Woolworth, 150 U. S. 401.
White v. Ewing, 159 U. S. 36.
New Orleans v. Fisher, 180 U. S. 185.

Are not these two corporations the same? Have they not the same blood, veins and sinew? Can one of them move without the other? Are they not as His Honor, Justice Pardee says, like Siamese twins, and what one knows the other knows, what the one feels, the other feels, what binds the one, binds the other?

The Alabama & Georgia Manufacturing Company, whether chartered in Alabama or in Georgia, had the same officers and the same office. When one of the corporations met, the other necessarily met also, for each corporations had the same officers, stockholders and directors, if the Alabama & Georgia Manufacturing Company was ever organized as a corporation at all. If one of the corporations owned property, the other also owned the same property. If one of them made a mortgage, the other necessarily made it also. It is not shown that either corporations had any property which the other did not also own. When the Alabama & Georgia Manufacturing Company, as chartered under the laws of Georgia, was called into court in the Robinson

suit, the same corporation, as chartered in Alabama was necessarily there also, although not named, and had the duty then and there thrust upon it of asserting its rights, if it had any.

Let us see to what a condition the decision drives us. Robinson could not have sued the Alabama and Georgia corporations, either in Alabama or in Georgia, in the same suit. He must therefore have filed his suit in a State court in Alabama, which would have had no jurisdiction to order the sale of the mortgaged property in Georgia, or in a State Court in Georgia, which would have had no jurisdiction to order the sale of the mortgaged lands in Alabama, or a separate suit in each jurisdiction and run the risk of having one or the other court hold that the first suit brought was a bar to the bringing of the other. All that the law requires, we respectfully submit, is that the party, whose interest is to be affected, should be before the court, whether in his true name or not, in other words, should have his day in court. That being accomplished as to the Alabama & Georgia Manufacturing Company as a Georgia corporation, it bound the same corporation under its Alabama charter, when it is shown that the two corporations are one and the same.

When a corporation is organized under the laws of two different States, but has in each State the same stockholders, officers and property, said corporation is a citizen of each of said States for the purposes of jurisdiction and proceedings against said corporation is one State are binding upon it in the other.

Muller vs. Dows, 94 U. S. 444.
Union Trust Co. vs. Rochester, 29 F. R. 609.
Louisville T. Co. vs. Louisville R. Co. 75 F. R. 433.
Graham vs. Boston, 108 U. S. 161.
Nashua vs. Boston, 16 A. & E. R. cases. 488.
Hawkins vs. Glenn, 131 U. S. 319.
2 Van Fleet Former Adjudication, pp. 994-6.
Hirschl Combinations, pp. 218-219.
Cook on Corporations, 4 Ed. Secs. 9, 10, 237, 2[illegible].

And the plaintiff may select in which State to sue.

Uphaff vs. Chicago, etc., 5 Fed. 550.

The real parties defendant to the Robinson suit and complainant to the Alabama suit under the names of the Alabama & Georgia Manufacturing Company and Huguley Manufacturing Company were the stockholders respectively of those two corporations, and while in each suit they are by a fiction of the law presumed to be citizens of the jurisdiction in which the suit was brought they are the same and identical persons; and proceedings and judgments against the corporations in one jurisdiction are binding upon the corporation in the other jurisdiction without regard to the descriptive character by which it sues or was sued.

Muller vs. Dows, 94 U. S. 444-5.
Home v. B. & L. R. Co., 18 Fed. 50.
N. & L. R. Co. v. B. & L. R. Co., 19 Fed. 804.
Memphis v. Alabama, 107 U. S. 585.

In Root vs. Woolworth, 150 U. S. 401, there had been a suit in the Circuit Court of the United States for the District of Nebraska by one Morton against one Root, in which suit, Morton's title to a piece of land had been established against the said Root. Afterwards Woolworth acquired Morton's title. Root re-entered upon the land claiming no other title than that which had been decided to be inferior to the title of Morton. Woolworth filed his bill in said Circuit Court for the District of Nebraska to enforce the decision before that made in favor of Morton, and prayed an injunction against Root enjoining him from asserting any title to said land against Woolworth. The Supreme Court of the United States held that the Circuit Court of Nebraska had jurisdiction of the case upon the ground that each court of equity has jurisdiction to carry into effect its own decree, orders and judgments and held that Woolworth being privy in estate to Morton had the right to file the bill and should not be compelled to relitigate the question of title with Root.

See also Story Eq. Pl., Sec. 429.

In Montgomery vs. Tutt, 11 California, 190, it is said, "The power of the Court to issue the judicial writ or to make an order and enforce the same by writ of assistance, rects upon the obvious principle that the power of the Court to afford a remedy must be co-extensive with its jurisdiction of the subject-matter. Where the Court possesses jurisdiction to make a decree, it possesses the power to enforce its execution. * * * The title held by the mortgagor passes under the decree to the purchaser upon the consummation of the sale by the master's or the sheriff's deed. As against all the parties to the suit, the title is gone and, as the right to the possession, follows the title, it would be a useless and vexatious course to require the purchaser to obtain such possession by another suit. Such is not the course of procedure adopted by a court of equity. When that court adjudges a title to either real or personal property to be in one as against another, it enforces its judgment by giving the enjoyment of the right to the party in whose favor it has decided."

See also Story Eq. Pl., Sec. 959.
Kershaw vs. Thompson, 4 Johns Ch. 609.

It is no objection to the action of the Circuit Court of the United States for the Northern District of Georgia that the suit which the Alabama & Georgia Manufacturing Company and Huguley Manufacturing Company were restrained from prosecuting was pending in a Chancery Court in Alabama.

In French vs. Hay, 22 Wallace 250, the suit commenced and which the parties thereto were enjoined by the Circuit Court of the United States for the Eastern District of Virginia from prosecuting had been commenced and was pending in the District Court of the City and County of Philadelphia and in French vs. Hay, the Supreme Court of the United States says, "The Court having jurisdiction *in personam* had power to require the defendant to do or to refrain from doing anything be-

yond the limits of its territorial jurisdiction which it might have required to be done or omitted within the limits of such territory * * * While the jurisdiction lasted, it was exclusive and could not be trenched upon by any other tribunal."

See also:—
Watts vs. Waddle, 6 Pet. 391.
Lewis vs. Darling, 16 How. 1.
Hagan vs. Lucas, 10 Pet. 400.
Taylor vs. Tainter, 16 Wall. 370.

4 ALABAMA & GEORGIA MANUFACTURING COMPANY NOT A NECESSARY PARTY.

It is immaterial whether there was or was not an Alabama corporation known as the Alabama & Georgia Manufacturing Co. And it is immaterial in what capacity, whether as organized under the Georgia or Alabama laws, it executed the Robinson mortgage or had title to the lands it is bound by the proceedings in the Robinson case, because, as a matter of fact, at the time of the institution of the Robinson suit in January, 1891, the Alabama & Georgia Manufacturing Co., whether it be called an Alabama or a Georgia corporation, had no interest of any sort, kind, character or description, in the property which was sold, and was not for that reason, either as an Alabama or a Georgia corporation, a necessary party to the suit.

Wilkinson v. May, 69 Ala. 33.
Thomas v. Jones, 84 Ala. 302, and authorities there cited.
Kerr v. Watts, 6 Wheat. 550.
Boon v. Chiles, 8 Pet. 532.

The proof unquestionably shows, as hereinabove set forth, that in January, 1890, the Superior Court of Troup County, Georgia, sold all the property in Alabama and Georgia of the Alabama & Georgia Manu-

facturing Co., to parties who formed themselves into the Huguley Manufacturing Co. The evidence without conflict shows that the Huguley Manufacturing Co. went into possession of all of said property in Alabama and Georgia in pursuance to said sale; that said Huguley Manufacturing Co. treated the property as its own; tore down old buildings and erected new, changed the machinery, mortgaged property and put the Alabama & Georgia Manuufacturing Co. entirely out of the possession of each and all of the said property in Alabama and in Georgia. And the evidence unquestionably shows that in January, 1891, when Robinson filed his bill to foreclose said mortgage, all of the interest and possession of the Alabama & Georgia Manufacturing Co. in Alabama and Georgia had ended. And at the time said Chambers County suit was filed, to-wit: on the 2d day of May, 1901, the Alabama & Georgia Manufacturing Co. had been out of possession of each and all of said property for nearly ten years and a half, and was, therefore, barred by the statute of limitations, as to any right, claim or title to said property.

In answer to this unquestioned evidence, it is said that the record does not show that the Alabama & Georgia Manufacturing Co. as an Alabama corporation, was made a party to the proceedings in the Superior Court of Troup County, Georgia, and that the evidence does not show that said Superior Court ever obtained jurisdiction of the Alabama & Georgia Manufacturing Co. as an Alabama corporation, and, therefore, it is contended that the sale to the Huguley Co. as to the lands in Alabama of the Alabama & Georgia Manufacturing Co. was void.

Admitting for the sake of the orgument that the Alabama & Georgia Manufacturing Company of Alabama was not made a party to the proceedings in the Superior Court of Troup County, Georgia, and that for that reason that court did not acquire any jurisdiction to sell the lands in Alabama, yet an unanswerable answer to that proposition is, that the Alabama & Georgia Manufacturing Co. have been out of the possession of said property by virtue of said

sale under the decree of said Superior Court for more than ten years before the filing of the Chambers County suit and regardless of whether said sale gave title to the purchasers or not, of the lands in Alabama, the adverse possession of said lands by the Huguley Manufacturing Co. for about ten years and a half before the filing of the bill in Chambers County, Alabama, bars said Alabama & Georgia Manufacturing Co. from disputing the validity of the title which the Huguley Manufacturing Co. claims, and which the Alabama & Georgia Manufacturing Co. admitted in the peititon filed by the Alabama & Georgia Manufacturing Co. and Hugley Manufacturing Co. as shown on page 200 of the record.

It is also claimed that the proceedings in the Robinson case were invalid because the sale of the mortgaged property was not made until after the legal death of the Alabama & Georgia Manufacturing Co. as a Georgia corporation. If it was material at all that a decree in said case should have been redered against the Alabama & Georgia Manufacturing Co. which, by all the proof had lost, long before any of the said proceedings were had, all of its right, tjtle and interest in the mortgaged property, then we say that the sale was nevertheless valid, nothwithstanding the legal death of the Alabama & Georgia Manufacturing Co. The sale was but the execution of the decree which had previously and during the life of the Alabama & Georgia Manufacturing Co. been rendered. At the time the rights of the parties were adjudged, at the time the equities were settled, to-wit: in May, 1895, it is not pretended that the charter of the Alabama & Georgia corporation had expired. It is, therefore, immaterial whether at the time of the sale said corporation had a legal existence or not.—Collingsworth v. Horn, 4 Stew. & Port. (Ala.) 237; Gayle v. Bancroft, 22 Ala. on p. 322; Bragner v. Langmead, 7 Durn & East. 20.

6 THE PLEADINGS IN THE ANCILLARY SUIT.

The contents of the bill filed by the Riverdale Cotton Mills have already been stated.

It is claimed that there was no answer filed to said ancillary bill and that the final decree was rendered without first taking decrees pro confesso against the defendants. A decree pro confesso is only proper where there is no answer.

Rule 18, Equity Prac., U. S. Courts.

There was answer (pp. 629 to 660, Record).

It is claimed that this was not an answer.—Let's test it.

The paper which we claim was an answer was headed, "Answer to the bill and response to the rule to show cause."

In the first place, they admit the filing of the bill in Chambers County attached as an exhibit to the ancillary bill. They then attempt to show that the two corporations are Alabama corporations, and that the Alabama & Georgia Manufacturing Co. had also been incorporated in the State of Georgia. They say that there never was any merger of the Alabama & Georgia Manufacturing Co. as organized in Alabama and in Georgia, but that there were two separate corporations and they plead that it was only the Georgia corporation known as the Alabama & Georgia Manufacturing Co. which was sued in the Robinson suit. They denied the allegation of the ancillary bill that the Huguley Manufacturing Co. was a Georgia corporation (although in the Robinson suit, said Huguley Manufacturing Co. had asserted itself to be a corporation organized under the laws of Georgia. p. 513.) Said answer then proceeds to plead that the Circuit Court of the United States for the Northern District of Georgia has no jurisdiction to act in the ancillary proceedings for the reasons:

First, that the complainant, the Riverdale Cotton Mills, is a citizen of Georgia, and the Alabama & Geor-

gia Manufacturing Co. and Huguley Manufacturing Co. were also stated to be citizens of Georgia.

This point is not tenable.—Root v. Woodworth, 150 U. S. 401; Krippendorf v. Hyde, 110 U. S. 276.

Second, that the court has no jurisdiction because the suit to foreclose the Robinson mortgage was then pending in the Supreme Court of the United States. (A contention wholly untenable as shown by the following authorities):

> 7 Encyc. of Plead. & Prac., 330-1.
> Hinson vs. Adrian, 91 N. C., 372.
> Allen vs. Allen, 80 Ala. 154.
> Jennings vs. Carson, 4 Cranch, 2.
> Spring vs. S. C. Insurance Co., 6 Wheat., 518.

Third, because the proceedings do not relate to bankruptcy, and that under section 720 of the revised statutes of the United States, said court has no jurisdiction to enjoin proceedings in a State court.

This is an injunction against parties over whom the court has acquired jurisdiction in the Robinson suit, and, therefore, had a right to control.—French v. Hay, 22 Wall. 250.

Fourth, because in the Chambers County suit certain pleadings had been filed.

It was absolutely necessary to file an answer in the Chambers County suit within thirty days after the filing of said bill to prevent the rendition of a decree pro confesso.

Fifth, because the charter of the Alabama & Georgia Manufacturing Co. granted by the State of Georgia, had expired before the sale of the property was made in the foreclosure proceedings to the petitioner.

It is not alleged, as was a fact, that said charter had expired when the *decree* of sale was rendered.

Sixth, because all of the property sold was situated in Alabama, which was shown not to be true.

Seventh, because a part of the lands were situated in Alabama and a part in Georgia.

And then said answer avers the granting of charters by Alabama and Georgia to the Alabama & Georgia Manufacturing Co., and the granting by Alabama of a charter to the Huguley Manufacturing Co., and pleads that the Alabama & Georgia Manufacturing Co. and Huguley Manufacturing Co., as corporations under the laws of Alabama, were never parties to said foreclosure proceedings in the Robinson case; that the suit in Chambers County is for redemption, whereas the suit in the Robinson proceedings was for foreclosure.

This was certainly an answer.

It is also said there was no replication to the answer. It is too late to make any such point. The time for making that point was in the Circuit Court and can not be raised for the first time in an Appellate Court.

Fritz v. Stover, 22 Waly. 769.
Central etc. v. Connecticut etc., 104 U. S. 54.

7. THE ANSWER WAS NOT EVIDENCE.

We admit that the rule of pleading is that where a case in equity is tried upon the bill and answer alone, the allegations of the answer are to be taken as true. This rule, however, has no application whatever in this case. There is another rule which has a great deal more force, and to which the appellants must conform, and that is, that where a case in equity is tried upon the pleadings and proof, as this case was tried, the allegations of the answer setting up new matter amount to nothing unless supported by proof.

In this case the evidence contained in the Robinson case which was in evidence, (p. 665) and which if not in evidence was necessarily in the mind of the court being a part of its own records, showed to be true all of the material allegations of the ancillary bill except the allegation that the Alabama & Georgia Manufacturing Co. and Huguley Manufacturing Co. had filed their bill in Chambers County, Alabama, seeking to re-

open and re-litigate all of the questions which had been adjudicated against them in the Robinson suit. This Chambers County bill was attached as an exhibit to the ancillary bill, and the answer not only admitted that such a bill had been filed, but sought to uphold it as a proper proceeding and not being, as we contend it was, a contempt of the Circuit Court of the United States for the Northern District of Georgia. In the absence of any proof on the part of the appellants to sustain the allegation that the Alabama & Georgia Manufacturing Co. and the Huguley Manufacturing Co. were Alabama corporations, the court below properly paid no attention to said allegation, because the record in the Robinson case showed each of these corporations to be Georgia corporations; showed that they had admitted themselves to be Georgia corporations; showed that they had admitted the property named in the mortgage to belong to the corporations as Georgia corporations; and showed that the Alabama & Georgia Manufacturing Co. organized under the laws of Georgia had executed the mortgage which Robinson foreclosed. The proof, therefore, before the Circuit Court made out in every essential particular, the allegations of the ancillary bill. Upon said proof, and in the absence of countervailing proof, it was the unquestioned duty of the Circuit Court to render the decree which was rendered.

An allegation in an answer entirely impertinent to the bill, (viz, the dual existence of said Alabama & Georgia Manufacturing Company), cannot be established as evidence, even though the plaintiff neglected to file a replication.

Gunnel v. Bird, 10 Wall. 304.

New matter in an answer in response to anything in the bill, must be sustained by proof to be of any avail as a defense.

Roach v. Summers, 20 Wall. 165.
McCoy v. Rhodes, 11 How. 131.
Seitz v. Mitchell, 94 U. S. 580.

Where an answer admits a fact and insists upon a disputed fact by way of avoidance, the fact admitted is established, but the fact insisted upon (viz, the dual existence of the Alabama & Georgia Manufacturing Company) must be proved.

Clements v. Nicholson, 6 Wall. 299.
Clarke v. White, 12 Pet. 178.
McCoy v. Rhodes, 11 How. 131.

The Supreme Court of Alabama, in McDonald v. Mobile Life Insurance Co., 56 Ala., on page 470, says: "Relief can only be granted on allegations and proof, and the latter will never be allowed to supply omissions or defects in the former (and e converso, we say). Allegations, *admitted or proved* are the only premises which will uphold a chancery decree."

See also Floyd v. Ritter, 5 Ala. 356.

"In equity a party cannot succeed upon a case proved, but not alleged, any more than upon a case alleged but not proved."

Foster v. Goddard, 1 Black, 506.
Grosholz v. Newman, 21 Wall. 481.

An answer to a bill in equity, though sworn to, is worthless as *evidence*, in so far as it sets up independent matter, not responsive to the averments of the bill.

Barton v. Barton, 15 Ala. 400.
Gordon v. Bell, 50 Ala. 213.

6th. The burden of proving a disputed fact rests upon the party affirming its existence and claiming to derive right and benefit from it.

Lehman v. McQueen, 65 Ala. 570.

When the law casts the burden of proof upon a party, if he does not offer evidence of the fact, for all the purposes of the particular case, the non-existence of the fact must be assumed.

Lehman v. McQueen, 65 Ala. 570.

Here every material allegation of the ancillary bill was proved by the record in the Robinson suit, and by the admissions of the answer. Not one single allegation of the answer, setting up new matter, is supported by any evidence. The allegations of the answer must then be disregarded.

Lehman v. McQueen, 65 Ala. 570.

8.—But, if we admit, for the sake of the argument, that the proof supports the allegations of the answer or that the answer itself is evidence, yet, we respectfully insist that the decree of the Circuit Court for the Northern District of Georgia was correct and should have been affirmed in the Circuit Court of Appeals, for there was nothing in the answer and nothing in the proof which contradicted the facts that the Alabama & Georgia Manufacturing Company and Huguley Manufacturing Company had been sued in the Robinson case, and, although each of these corporations was sued as, and, admitted itself to be, a Georgia corporation, yet the decrees in the Robinson suit rendered against these two corporations, as chartered under the laws of Georgia, were binding upon them, as organized under the laws of Alabama.

Muller v. Dows, 94 U. S. 445.
And other authorities supra.

Neither the answer nor the proof controverts the fact that the equity of redemption of the Alabama & Georgia Manufacturing Company in all of the property involved was lost to it and vested in the Huguley Manufacturing Company more than ten years before the filing

of this ancillary bill and that by the sale of the mortgaged property in the Robinson suit the debt of the Alabama & Georgia Manufacturing Company was extinguished. There was no contradiction either of the fact, shown by the record, that the Huguley Manufacturing Company in the Robinson suit had prayed for and been awarded the rents of the mortgaged property for the time elapsing between the two sales. These facts should forever estop these two corporations from contesting or disputing what was done in the Robinson suit.

Respectfully submitted,

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Of Counsel for Petitioner.